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## **6.0 SUMMARY, FINDINGS, AND RECOMMENDATIONS**

MGT of America, Inc. (MGT), in association with Fields and Brown, Attorneys at Law, conducted a Second Generation Disparity Study for the City of Phoenix. This summary describes our methodology, findings, and recommendations.

### **6.1 Study Background**

The study's ultimate objective was to determine whether there is a compelling governmental interest in continuing the City's M/WBE programs in procuring construction services, general services, and commodities under the guidelines established by the U.S. Supreme Court and other relevant lower court decisions. A key component of the study was to determine: the level of minority- and women-owned business participation that exists in the City's contracting and purchasing; the number of firms available (by race and gender) to provide goods and services; and, whether the evidence supports affirmative action under the applicable legal standards.

MGT designed and implemented a methodology to incorporate the guidance provided by courts. Our primary tasks included conducting a legal analysis of relevant legal opinions; analyzing City ordinances, policies, and procedures relating to M/WBE contracting; analyzing M/WBE utilization for the period January 1, 1993, through December 31, 1997; determining M/WBE availability; calculating disparity; analyzing anecdotal data from public hearings, personal interviews, and phone surveys; and developing findings and recommendations.

### **6.2 Legal Analysis**

Key points from relevant court decisions reviewed in this report are as follows:

- (1) In *Croson*, the United States Supreme Court determined that strict scrutiny is the appropriate standard of judicial review for race-conscious affirmative action programs.
- (2) Intermediate scrutiny applies under the equal protection clause to government-imposed gender preferences in awarding contracts. This standard requires that the government entity demonstrate the gender preference is substantially related to an important governmental objective.
- (3) To withstand strict scrutiny, an MBE program must be based on a compelling governmental interest and must be narrowly tailored to achieve that interest.
- (4) The Ninth Circuit identified two factors necessary to establish a compelling governmental interest: (1) identifiable discrimination has occurred within the local industry affected by the program; and (2) the governmental entity enacting the race-conscious program must have caused or indirectly perpetuated the discrimination to be remedied by the program.
- (5) While the Supreme Court did not specifically define the methodology that should be used to establish the evidentiary basis required by strict scrutiny, the Court did conclude that evidence of significant statistical disparities between minorities utilized and qualified minorities available satisfies strict scrutiny and justifies a narrowly tailored M/WBE program.
- (6) Under *Croson*, availability is determined by the number of qualified minority contractors willing and able to perform a particular service.
- (7) *Croson* also recognized the use of statistical comparison to measure disparity by comparing the number of available M/WBEs qualified to perform certain contracts with the amount of City contract dollars actually awarded to M/WBEs.
- (8) Anecdotal evidence is most useful as a supplement to strong statistical evidence. This evidence alone is rarely, if ever, enough to demonstrate a sufficient systematic pattern of discrimination necessary for a governmental entity to adopt an affirmative action program.
- (9) To justify a goals program based on race or gender under the Constitution's equal protection clause, a local government must demonstrate that it has historically discriminated against particular race or gender groups and/or it has become a passive participant in a system of racial exclusion practiced by local contractors.

- (10) According to the Ninth Circuit, a narrowly tailored MBE program must meet three requirements: (1) the program must be instituted either after, or in conjunction with, race-neutral efforts to increase minority business participation in public contracting; (2) the use of minority participation goals must be set on a case-by-case basis, rather than as part of rigid numerical quotas; and (3) an MBE program must be limited in its effective scope to remedying discrimination within the boundaries of the enacting jurisdiction.

### **6.3 Methodology**

#### **6.3.1 Review of Contracting Policies, Procedures, and Practices**

Relevant City policies, ordinances, operating procedures, and manuals were obtained and reviewed. Policies and procedures affecting the three business classifications of the study were analyzed. Interviews were conducted of City management and staff regarding the application of policies, discretionary use of policies, exceptions to written policies and procedures, and their impact on key users. Interviews were also conducted with external users to determine the impact of City policies on firms conducting or attempting to conduct business with the City.

#### **6.3.2 Statistical Analyses**

MGT collected and analyzed data for City prime and subcontractor construction contracts, and purchases for general services and commodities between January 1, 1993 and December 31, 1997. The study included the following race and gender classifications: African American, Hispanic American, Asian/Native American, non-minority women, and non-minority men. After interviewing City staff to identify the locations of contract data and purchasing records, a data collection plan was developed. Contract records were reviewed from the Engineering and Architectural Services Department and the Materials Management Division of the Finance Department.

**Relevant Market Area.** The overall market area is all counties in which the City spent or awarded contract or procurement dollars. For the purpose of the statistical analyses, the relevant market area was defined as those counties where the City spent or awarded 75 percent or more of the total dollars awarded over the study period, determined separately for each business category. The relevant market area establishes the geographic boundaries for the utilization, availability, and disparity analyses. After analysis of all contracts, the relevant market area for each business category was established as follows:

- Construction – Maricopa County, AZ
- General Services – Maricopa County, AZ; Los Angeles County, CA; Cook County, IL; and Rock Island County, IL
- Commodity Purchases - Maricopa County; AZ

Subsequent data analyses were based on these counties for each respective business category.

**Utilization.** After the relevant market area was determined for each business category, firms within that relevant market area were identified as M/WBE or non-minority firms. From this analysis, utilization of M/WBEs and non-minorities was determined. MGT calculated the percentage of dollar amounts awarded or paid to each group within the relevant market area for each fiscal year of the study period by business category.

**Availability.** To determine the number of firms available in the relevant market area, data collected by the U.S. Bureau of Census were used. The data have been objectively derived free from race/gender biases that might affect the relative percentages of firms in the different M/WBE categories, thus, producing a reliable count of potentially available firms by county and industry.

**Disparity.** A comparison of utilization and availability by each M/WBE group is the foundation of the disparity analysis. The measurement of disparity is presented in

the disparity index. A disparity index of 0.00 indicates no utilization. Conversely, a disparity index of 100 indicates parity. Parity occurs when utilization equals availability.

### **6.3.3 Anecdotal Analysis**

After performing the statistical analyses and determining the existence of substantial disparity, MGT determined that a *prima facie* case of discrimination had been established. According to case law, once a significant disparity is shown, an inference of discrimination arises. To support findings of statistical disparity, *Croson* and subsequent cases require that anecdotal research tie the disparity to discriminatory practices in the market area.

Anecdotal information was collected to investigate possible discriminatory patterns in the market area. By utilizing multiple techniques, we were able to achieve results superior to results dependent upon any individual research technique. Our approach for gathering anecdotal data included:

- Public Hearings
- Personal Interviews
- Phone Surveys

**Public Hearings.** Two public hearings were widely advertised in the *Arizona Republic*, M/WBE publications and through announcements to M/WBE and non-minority business and trade organizations. Each public hearing provided M/WBE and non-minority business owners the opportunity to testify to their experiences contracting with the City of Phoenix or prime contractors working on its behalf. Participant discussions focused on experiences with the City, M/WBE program issues, participation barriers, and opportunities for improvement.

**Personal Interviews.** Sixty-nine confidential personal interviews were conducted with business owners in Maricopa County, Arizona. All interviews were conducted using a personal interview guide. Each person completing an interview was required to

acknowledge by signature that the recorded responses accurately reflected the participant's responses. A content analysis of interview responses was completed identifying key factors related to attempts to conduct business with the City, experiences with prime contractors and obstacles in the business community.

**Telephone Surveys.** Using vendor databases obtained from the City, a survey of 346 firms was conducted. To obtain the completed surveys, a total of 12,252 phone calls were randomly made to firms taken from the vendor databases. Survey findings for white male business owners were used for demographic information. Data sample sizes for M/WBE groups were not sufficient to analyze.

#### **6.3.4 Conclusion**

Although the City has improved M/WBE participation since the 1993 disparity study, there still remains significant disparity between the utilization and availability of M/WBEs.

MGT **concluded** the following:

- (1)The results of the statistical analysis in Chapter 4 support a finding that available M/WBEs in the relevant market area are significantly underutilized and have encountered significant levels of disparity and discrimination.
- (2)The results of the anecdotal analysis in Chapter 5 support a finding that the City has been:
  - A passive participant in discriminatory practices against minority- and women-owned prime contractors in the construction industry;
  - a passive participant in discriminatory practices against minority- and women-owned subcontractors in the construction industry; and
  - a passive participant in discriminatory practices against minority- and women-owned general services and commodities vendors.
- (3)Significant statistical disparities found in Chapter 4 and supporting anecdotal testimony found in Chapter 5 compel an inference of discrimination sufficient to support the **continuation** of a race-based remedial program.
- (4)The City should establish a new Small Business Enterprise (SBE) goals program for construction subcontractors, general services firms, and commodities vendors.

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| <b>FINDINGS AND RECOMMENDATIONS</b> |
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Based on the findings below, MGT developed recommendations addressing the City's M/WBE programs. Implementing the following recommendations will assist the City in designing a remedial program that is narrowly tailored.

#### **6.4 Findings and Recommendations**

##### **Finding 6.4.1:**

After interviewing City officials regarding implementation of the 1993 ordinances, it did not appear the City officials had established annual participation goals as required in Section 18-104. Furthermore, the ordinances do not provide a mechanism for determining if the price preference program is eliminating the disparity between utilization and availability. Although the City has made some improvement in its contracting with M/WBEs since the 1993 disparity study was completed, significant levels of disparity and discrimination continue to exist in City contracting.

Established annual participation goals will assist the City in monitoring utilization levels of M/WBEs in both construction and the procurement of goods and services.

##### **Recommendation 6.4.1:**

**The City should modify its M/WBE program and establish annual goals for each minority or woman group in the areas of construction subcontracting, general services and commodities.**

- **On an annual basis, the City should review its budget and establish annual goals, in dollars and percentages, consistent with M/WBE availability, for each M/WBE group that has demonstrated significant disparity. Only M/WBE firms in the relevant market areas should be allowed to benefit from the program.**
- **The Goals Compliance Office and Finance Department should prepare quarterly reports tracking the overall participation of each M/WBE group that has demonstrated significant disparity on each project or contract in their department, and they should compare that amount with the annual participation goal.**

- The utilization of M/WBE groups should be calculated on the dollar percentage of all contract dollars awarded for each separate business groups.
- Annual goals for each ethnic group and women should reflect M/WBE availability as referenced in this report. The purpose of annual participation goals is to assist the City in monitoring the success of the remedial program. Currently, the City does not have a method of measuring where the M/WBE participation level is on the continuum between the current level of disparity and full participation (disparity index of 100).

**Finding 6.4.2:**

There are inconsistencies between Article VI, the enabling ordinance for construction contracting, and the draft procedure manual for setting M/WBE subcontracting goals. According to the draft procedure, goals are to be set only on the base bid. Goals are not set for any bid alternates. Article VI, however, refers to “project” goals, which could be interpreted to include alternates.

**Recommendation 6.4.2:**

**Construction project goals should apply to the base bid and any alternates included as part of the project in accordance with recommended goals setting procedures.**

- The Goals Setting Committee should set project goals on contemplated bid alternates for construction projects. Goals set on alternates should be established using the same procedure as those set on the base bid. If an alternate is not selected, the goal set for the alternate is not binding on the successful bidder.

**Finding 6.4.3:**

According to research observations and interviews conducted with members of the Goals Setting Committee and EAS staff, the goal setting process is too subjective and results in setting conservative goals that do not reflect actual availability.

**Recommendation 6.4.3:**

**EAS, the Goals Compliance Unit and the Goals Setting Committee should develop a new method for establishing project goals. The new method should be more objective and should be based on actual availability.**

- The method used by EAS staff should be more objective. According to interviews, the method used in establishing recommended goals has a subjective component. The EAS staff determine recommended goals by evaluating the extent of



subcontracting activity in various trade areas. A similar evaluation is then conducted by the Goals Setting Committee. The Goals Setting Committee should be provided with recommended goals that reflect total availability.

- The concern of EAS staff that goals must be reasonable and attainable is important because it satisfies the program flexibility requirement of *narrow tailoring*, but this must be considered with the goal of increasing utilization.
- EAS should reevaluate the current formula requiring the division of the goal percentage by four. Goals should be established based on availability of potential bidders.

**Finding 6.4.4:**

“Construction Bid Opening Procedures” and “Setting Minority and Women Business Enterprise Subcontracting Goals” currently used by EAS, the Goals Compliance Unit, and the Goals Setting Committee are in the form of draft Administrative Regulations. Neither policy has been finalized or formally adopted, although they are being followed as if they were currently effective.

**Recommendation 6.4.4:**

**Administrative policies and practices should be finalized and properly adopted.**

- EAS, the Goals Compliance Unit, and the Goals Setting Committee should modify both drafts to ensure compliance with the enabling ordinance. The drafts should then be formally adopted as administrative regulations.
- The 10 percent maximum MBE and WBE combined goal outlined in the draft policy on setting M/WBE subcontracting goals should be eliminated. The objective of the subcontracting goals program should be to increase MBE and WBE utilization to reflect availability. Since certain types of projects do not have any or low participation goals, the Goal Setting Committee should have the flexibility to set goals higher than the annual goal on a project by project basis, if sufficient availability exists. For example, from information provided by EAS, the number of construction contracts with zero-zero participation goals is high. Approximately one in five or 20 percent of City construction contracts since 1993 have had zero-zero participation goals. By exceeding the annual goals when sufficient availability exists, EAS would increase the possibility of meeting the annual goals. This method will compensate for projects where low availability exists.

**Finding 6.4.5:**

City officials have the potential to set and attain higher participation goals in the construction industry. Of the over 500 contracts awarded since inception of this program, only 29 waivers have been requested. Additionally, on average prime contractors are exceeding the established goals. For example, a summary, report produced by EAS indicates that the required combined goals were 5.57 percent and the combined goals proposed by low bid prime contractors were 7.88 percent. The existing goals setting process does not sufficiently account for current M/WBE availability and if continued will result in inadequate goals that predictably fail to achieve sufficient M/WBE participation. With low project goals, the construction contracting program as structured results in low M/WBE participation at best.

**Recommendation 6.4.5:**

**Project goals should be set higher to increase MBE and WBE participation.**

- **The City should set higher, more challenging goals, in line with availability, in order to encourage prime contractors to solicit M/WBE participation more actively and more aggressively on all City projects.**

**Finding 6.4.6:**

One of the largest complaints during personal interviews and public hearings was that the current method of submitting bids encourages bid shopping. This observation was confirmed by staff of the Goals Compliance Unit and EAS. Written regulations governing the bidding process allow for bid shopping abuses by prime contractors. Use of the *Assurances Affidavit* encourages, if not increases, bid shopping.

Unlike prime contractors, subcontractor's price quotations are not set or defined at the time of bid opening. Accordingly, the apparent low bidder is permitted to bid shop among MBEs and WBEs over a 24-hour period. Because prime contractors are allowed to solicit bids during that 24-hour time period, MBEs and WBEs often do not have ample time to prepare bid responses. Additionally, MBEs and WBEs complained that prime contractors initially indicate they intend to seek a waiver but 24 hours later they are able to meet the goals.

**Recommendation 6.4.6:**

**Prime contractors should be required to identify MBEs and WBEs and submit a utilization plan with their bid(s)—not the next day.**

- **City officials should eliminate the 24 hours a bidder has to complete the M/WBE utilization form.**
- **By requiring all prime contractors to list all subcontractors proposed for a project, the City would collect accurate data on firm availability as provided in Recommendation 6.4.17.**

**Finding 6.4.7:**

As a policy for purchases under \$20,000, City Buyers are instructed to discontinue requesting quotations from M/WBE firms that do not respond to the City's request for quotations after two consecutive requests in a particular commodity or service area. There is no similar policy for non-M/WBE firms.

**Recommendation 6.4.7:**

**The Finance Department should continue to request quotations from M/WBEs that do not respond to the City's RFQs after two consecutive requests.**

- **The Finance Department should rescind the policy contained in a memorandum dated November 23, 1994 that requires M/WBE firms to be eliminated from bid lists if the firm does not respond to two consecutive solicitations.**

**Finding 6.4.8:**

Based on a review of documents provided by the Finance Department and personal interviews, the 2.5 percent price preference applied in the procurement of goods and services had limited success in increasing M/WBE utilization.

**Recommendation 6.4.8:**

**The City should continue the price/bid preference program with modifications. Instead of having a non-flexible 2.5 percent price/bid preference, the City should establish a range and adjust the price/bid preference according to the City's utilization of M/WBE firms.**

**Finding 6.4.9:**

M/WBE owners indicated that the size of a subcontract is sometimes a barrier to participation in City contracting. Owners complained that certain contracts are too large for their business to complete the required scope of work.

After interviewing EAS staff, Goals Setting Committee members, and M/WBEs, it was determined that prime contractors have a disproportionate impact on the level at which M/WBEs can participate in the construction contracting process. Under existing contracting procedures, prime contractors determine the scope of work on which M/WBEs may bid. Prime contractors that regularly conduct business with the City are aware of the capabilities of M/WBE subcontractors in the market area. Accordingly, by structuring the scope of work beyond the capacity of M/WBEs or limiting the scope of work to fit the City's participation goals, the prime contractor is allowed to control the level of M/WBE participation. This becomes particularly meaningful under the existing goals setting process because the levels at which goals are set are, in part, functions of prior bidding activity in a particular trade area.

**Recommendation 6.4.9:**

EAS officials should be more proactive in defining subcontracting trade areas in bid specifications to ensure that available M/WBEs are capable of bidding on more City projects. The subcontracting goals recommendation form should be modified to afford the City more input in defining bid specification subcontracting trade areas.

- The City should also consider providing bid preferences to businesses that opt to participate in a joint venture on smaller projects.

**Finding 6.4.10:**

Of the over 500 contracts awarded since the inception of this program, 25 waivers have been requested. Sixty percent of requests for waivers were either partially or fully granted.

**Recommendation 6.4.10:**

The City should compile a summary and analysis of the reasons given by contractors for waiver requests. The City should then address these reasons as policy, training, or self-improvement issues to increase MBE and WBE utilization.

- Providing contractors with a copy of the subcontracting goals waiver review form in the bid packet would help contractors realize the efforts necessary to demonstrate a good faith effort to solicit M/WBE participation.

**Finding 6.4.11:**

Since the City will be establishing race-specific goals, EOD must identify the race/ethnicity/gender certification of M/WBE firms to assist prime contractors in identifying potential subcontractors. The information gathered from this classification process should be used in developing quarterly reports.

**Commendation 6.4.11:**

EOD should be commended on its efforts to maintaining a well-run certification program. Most M/WBEs interviewed spoke highly of the attention that members of the department have given to M/WBE concerns. While several M/WBEs complained about the length of the certification application and the amount of documentation required, they also understood the need for such detail and found the application easy to understand.

**Recommendation 6.4.11:**

**EOD should further divide certified MBEs and WBEs according to ethnic group and develop a Small Business Enterprise (SBE) certification process.**

- **To assist in the development of an SBE program as discussed in Finding 6.4.15, certification parameters should be established and implemented.**

**Recommendation 6.4.12:**

**EOD should move quickly toward one-stop certification.**

One-stop certification for Maricopa County-based firms would create a larger pool of certified M/WBE businesses. Until that can be accomplished, EOD should continue to certify businesses for Maricopa County. EOD should also review the list of certified M/WBEs from the Arizona Department of Transportation (ADOT) to ascertain businesses on those lists that are not certified with the City, and encourage them to become certified with the City. Additionally, EOD should work with other certifying agencies in the consortium to establish a time line for moving toward complete reciprocity.

**Finding 6.4.12:**

In reviewing the certification directories prepare by EOD, businesses are not currently separated according to ethnicity and gender. Recommendation 6.4.1 suggests that the City establish annual goals for each minority and woman group; therefore, certification directories should separate businesses according to ethnicity and gender.

**Recommendation 6.4.13:**

**EOD should separate certified MBEs according to ethnic group, and separate WBEs from MBEs.**

- **Under each contracting category, certified firms should be divided according to ethnicity and gender.**
- **This breakdown will assist EAS staff and the Goals Setting Committee in setting project goals by facilitating the availability determination. It will also allow EOD staff to track whether certain groups are disadvantaged in the certification process, and whether there are certain groups that may simply not be aware of the certification process.**
- **Information gathered from this breakdown could be included as part of the needs analysis process for further development and utilization of MBEs and WBEs.**

**Finding 6.4.13:**

Arizona state law creates barriers to M/WBE participation as prime construction contractors by imposing requirements that limit the ability of M/WBEs to obtain contractor licenses.

Arizona Revised Statutes Title 32, Chapter 10 sets forth licensing requirements for individuals and organizations engaged in the construction industry. This statute requires licensure and bonding for a broad range of construction activities. As a condition of bidding public jobs, Title 34 also requires bonding at state prescribed levels.

**Recommendation 6.4.14:**

**The City should petition the Arizona legislature to modify existing statutory requirements on contractor licensure and bonding. Such statutes should bear a direct relationship to the benefit derived from such measures.**

The following recommendations are made in addition to the race- and gender-specific recommendations above.

***Establishing a Race- and Gender-Neutral Business Program***

**Finding 6.4.14:**

**The current Small Business Assistance Program has limited impact on M/WBE participation in City contracting.**

During the analyses of purchasing policies, procedures, and programs and anecdotal data, several areas of perceived discrimination were identified. Areas of perceived discrimination include the City's goal setting process, disparate treatment by City employees, non-minority contractors' bid shopping, and racist and sexist attitudes of City officials and non-minority business owners.

While *Croson* permits race and/or gender preference programs to remove statistical disparities and discrimination, it also requires the City to implement race- and gender-neutral methods.

As part of the 1993 City Ordinances establishing the M/WBE program, the City funded a Small Business Assistance Program (SBAP) within the Community and Economic Development Department. The City provided three full-time positions and operating funds to develop and implement a race- and gender-neutral program to help eliminate the disparities identified in the 1993 Disparity Study.

The SBAP consists of seven program components:

- First Point Information Center;
- technical assistance;
- consulting and counseling services;

- seminars and training;
- resource directories;
- financial assistance; and
- The Enterprise Community.

While these programs have some success, a service delivery tracking system is not in place to adequately measure the direct impact on M/WBEs. Many of the SBAP services are measured by the number of phone calls received or flyers distributed.

Further analysis of the statistical data show some improvement in the award of construction contracts on prime and subcontractor levels. The following table illustrates the minimal increase in M/WBE utilization. As shown, prior to the implementation of the M/WBE program, M/WBEs were used at a level of less than one half of a percent. After the M/WBE program was enacted, utilization rose to 2.96 percent. This increase in M/WBE utilization is primarily due to the construction subcontracting goals program and price preference program as shown in **Exhibit 6-1**.

Based on the data presented, the following race- and gender-neutral remedies are recommended.

**Recommendation 6.4.15:**

**The City should establish a new Small Business Enterprise (SBE) goals program for construction subcontractors, general services firms, and commodities vendors.**

The data presented in Chapters 3 through 5 clearly show evidence of gross statistical disparities and discrimination in the construction industry and continued systemic institutional barriers in the City of Phoenix. The City should reemphasize and in some cases implement new race- and gender-neutral methods to address identified disparities and discrimination. While the City has provided some small business assistance services, it is difficult to measure the direct impact of those services on small minority and women owned businesses. The City should develop and implement a Small Business Enterprise program to work in tandem with the current small business assistance programs.

The Small Business Enterprise program should include the following characteristics:

- Small business goals for construction subcontracts should be established to supplement M/WBE participation goals.
- On a case-by-case basis, considering availability and contract sizes, the City should reserve general services contracts and commodities purchases (non-construction contracts) for competition only among small businesses.

**EXHIBIT 6-1  
CITY OF PHOENIX  
UTILIZATION OF CONSTRUCTION SUBCONTRACTORS IN THE RELEVANT MARKET AREA  
BY RACE, GENDER AND ETHNIC CLASSIFICATION  
BEFORE AND AFTER M/WBE SUBCONTRACTOR PROGRAM**

| STAGE OF<br>SUBCONTRACTOR<br>PROGRAM | AFRICAN<br>AMERICAN |              | HISPANIC AMERICAN      |              | ASIAN & NATIVE<br>AMERICAN |              | NON-MINORITY           |              |                           |               | TOTAL                     |              |
|--------------------------------------|---------------------|--------------|------------------------|--------------|----------------------------|--------------|------------------------|--------------|---------------------------|---------------|---------------------------|--------------|
|                                      |                     |              |                        |              |                            |              | WOMEN                  |              | MEN                       |               | ALL CATEGORIES            | M/WBE        |
|                                      | \$                  | %            | \$                     | %            | \$                         | %            | \$                     | %            | \$                        | %             | \$                        | %            |
| BEFORE PROGRAM<br>1/1/93-10/31/93    | \$0.00              | 0.00%        | \$105,260.06           | 0.21%        | \$0.00                     | 0.00%        | \$127,532.56           | 0.26%        | \$49,644,702.88           | 99.53%        | \$49,877,495.50           | 0.47%        |
| DURING PROGRAM<br>11/1/93-12/31/97   | \$990,638.43        | 0.08%        | \$23,049,938.51        | 1.84%        | \$1,997,365.85             | 0.16%        | \$11,062,806.47        | 0.88%        | \$1,217,644,614.28        | 97.04%        | \$1,254,745,363.54        | 2.96%        |
| <b>TOTAL</b>                         | <b>\$990,638.43</b> | <b>0.08%</b> | <b>\$23,155,198.57</b> | <b>1.77%</b> | <b>\$1,997,365.85</b>      | <b>0.15%</b> | <b>\$11,190,339.03</b> | <b>0.86%</b> | <b>\$1,267,289,317.16</b> | <b>97.14%</b> | <b>\$1,304,622,859.04</b> | <b>2.86%</b> |

Source: Engineering & Architectural Services, Materials Management- City of Phoenix



- If the Arizona legislature amends public bidding laws in the future, the City should extend the SBE goals program to include construction prime contracts. MGT understands that current Arizona law prohibits the award of construction contracts using any factors other than the lowest responsible and “satisfactory” bid. The City should request the Arizona legislature to change public bidding laws.
- To provide technical assistance for small businesses, the City should create a supportive services program that has two goals: (1) introduce companies to the City contracting process as construction subcontractors and vendors on projects less than \$250,000; and (2) assist established businesses in expanding their ability to become qualified to compete for projects above \$250,000.
- The City should properly fund and staff implementation of the new SBE program, including program development, certification, and monitoring.

Regarding program eligibility:

- All participants should be in business in Maricopa County for a minimum of two years.
- Participants with a net worth less than \$750,000 should be classified as small businesses.
- Participants should not receive more than \$3 million over a three-year period under the program.

**Recommendation 6.4.16:**

**The City should conduct a performance review of the existing small business assistance programs.**

The City should conduct a performance review of the Small Business Assistance Program as managed by the Community and Economic Development (CED) Department to determine the effectiveness of this program. As part of the 1993 ordinances establishing the M/WBE program, the City created three positions in CED to assist in the development of minority and women owned businesses. In conducting this study, data provided by the City was inadequate to quantifiably measure the effectiveness of these programs. A performance review should determine the effect of the program on M/WBE firms and whether the benefits to M/WBEs warrant the cost.

**Recommendation 6.4.17:**

**Improve the City’s collection and management of contract data.**

It is imperative for the City to closely monitor the utilization of all businesses by race, ethnicity and gender to determine whether the small business program over time has the potential to eliminate race and gender disparities without specific race and gender goals. At this time, however, it does not.

It is also equally important to identify, for future availability analysis, the number of construction subcontractors available. Because the City does not collect this data, it is limited in the type of availability analysis it can conduct.

In order for the City to accurately monitor the small business program and assist the City in future availability analyses, it must collect and analyze the following data:

- The City should require *all* contractors to submit a list of all subcontractors contacted in preparation of their bid package. The list of potential subcontractors should include the proposed service, bid amount, and the race/ethnicity/gender of the business owner(s). The data will allow the City to accurately identify the number of actual subcontractors available.
- The City should record, as part of their purchasing vendor list, the date a vendor is added and deleted. By noting when a vendor registered with the City, the City can analyze the availability of registered vendors on an annual basis.
- The City should require that all contractors submit a list of all subcontractors utilized on a City project. This list should include all subcontractors (minority, women and non-minority) utilized, the total amount paid, and the race/ethnicity/gender of the owner. This comprehensive list should be required before the prime contractor's final payment for services. It is important to require prime contractors to identify *all* subcontractors utilized.

**Recommendation 6.4.18:**

**Review and revise grievance procedures to include mediation and conflict resolution.**

Some M/WBEs fear retaliation by primes or City officials if they express complaints or grievances. Thus, M/WBEs are reluctant to voice or file formal complaints or grievances. The City should consider mediation as a method of conflict resolution to follow up on verbal complaints. This method would emphasize win/win solutions without extensive documentation and encourage M/WBEs to report issues they may have with primes without fear of retaliation.

In the in-depth review process, at least one session should be held where the prime is not present, and the mediator should ensure complete confidentiality about any comments made in the session. A retaliation clause, including penalties, might be developed for primes who retaliate in any way against M/WBEs.

**Recommendation 6.4.19:**

**Provide training periodically to City staff, SBEs, and M/WBEs to fully explain the proposed SBE and M/WBE Programs.**

All City officials and staff involved in City purchasing (construction, general services, and commodities) should have general periodic training that explains the details of the

proposed SBE and M/WBE programs. The training should be scheduled semiannually and include newly certified SBEs, M/WBEs and City staff. This will increase understanding of the programs, their requirements, and increase the comfort level of all parties, and this will translate to better relations for all parties.

**Recommendation 6.4.20:**

**Review and strengthen developmental programs and activities in order to assist small businesses.**

The following programs and activities should be developed to assist SBEs:

- training programs tailored to address the particular needs of SBEs. For example:
  - more one-on-one training;
  - regional and annual conferences;
  - allowances for flexible schedules to accommodate time constraints of small businesses; and
  - emphasis on practical training where small businesses are walked through the entire contracting process.
- networking sessions for small businesses and primes arranged for the purpose of meeting, sharing information, and getting to know one another; and training for small businesses on how to market their business to prime contractors.
- providing follow-up information to small businesses on all contracts bid, such as:
  - the name of the winner;
  - their ranking;
  - analysis of lost points; and
  - ways to improve their next bid.
- research possible federal grants that could help SBEs get a head start with their businesses and provide operating loans for when they are awarded a City contract.

**Recommendation 6.4.21:**

**The City should work with interested trade associations if they choose to implement the proposed Mentor-Protégé Program in conjunction with the proposed Small Business Enterprise program. However, the City should not be responsible for staffing or implementing this program.**

If the Arizona General Contractors, Maricopa Contractors' Association or other business organizations choose to implement a Mentor-Protégé program, the City of Phoenix should work with them and participate in a committee format. However, this type of program has had limited success nationally, and City resources can be utilized more effectively in enhancing the SBE program.